FRONT Report LINE

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Concealed-carry law, provisions on hold

House Bill 349 allows Missourians to apply for a permit to carry a concealed firearm in Missouri. A legal challenge is pending and the law is **not** in effect, but the main provisions are discussed below.

Any Missourian qualifies for a concealed carry endorsement if he or she:

- Is a Missouri resident for at least six months or a member (or spouse) of the armed forces stationed in Missouri.
- Is a U.S. citizen and is at least 23.
- Has not been convicted of or pleaded guilty to any crime punishable by imprisonment of more than a year.
- Has not been convicted of or pleaded guilty to any offense involving a firearm or explosive weapon.
- Has not been convicted of, pleaded guilty to, or pleaded no contest to any misdemeanor offense involving a violent crime during the past five years.
- Has not been convicted of two or more misdemeanor DWI offenses or possession or abuse of a controlled substance within the past five years.
- Is not a fugitive from justice.
- Has not been dishonorably discharged from the U.S. armed forces.
- Is not adjudged mentally incompetent at the time of application or for five years before, nor has been committed to a mental health facility and released within the past five years.
- Has affirmed he or she is not a respondent of a full order of protection.
- Has received firearms safety training meeting the bill's standards.

Permitting procedures

Applicants must submit a certificate of training completion and pay a nonrefundable fee not to exceed $100 to the local sheriff, who then must fingerprint the applicant.

Once the sheriff receives the background check, he must issue the certificate of qualification within three working days. If the sheriff does not receive the background check within 45 days, he must issue the certificate.

If the sheriff later gets a background check that results in a disqualifying

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U.S. Supreme Court to review 2 police cases

The U.S. Supreme Court — which on Dec. 9 heard arguments in *Missouri v. Seibert*, a case dealing with *Miranda* — has already heard one case that limits checkpoints to highway safety and will hear another that requires individuals to identify themselves during *Terry* stops.

Hiibel v. Sixth Judicial District: A Nevada law requires individuals to identify themselves any time an officer has made a *Terry* stop, or investigative detention, of an individual based on reasonable suspicion that criminal activity may be occurring. While the officer clearly does not have to advise the individual of his rights under *Miranda*, the question remains whether requiring a person to identify himself is contrary to the Fifth Amendment.

Missouri does not have a similar statute, but Section 575.190, RSMo., does make it a misdemeanor for a witness to a crime to refuse to provide his name and address.

Illinois v. Lidster, heard on Nov. 5, deals with the use of checkpoints or roadblocks for purposes other than to enhance highway safety.

The Supreme Court ruled in *Indianapolis v. Edmond* that checkpoints to detect drug traffickers were unconstitutional because checkpoints cannot be used to enforce the "general criminal" laws. Thus, DWI and licensing checkpoints are permissible, but other types of checkpoints are of uncertain propriety because they may not relate directly to highway safety.

Officers set up a checkpoint in a neighborhood to pass out fliers and to gather information on a recent crime. While canvassing, Lidster was stopped and arrested for drunken driving.

The outcome of the case may determine the propriety of several commonly used checkpoints that do not relate directly to highway safety. Besides using this procedure to canvass crime scenes, roadblocks are commonly used in Missouri to search for escapees or suspects of serious crimes.

Jack Morris
1951-2003

Former Criminal Division chief dies

Jack Morris, who for 20 years led the Criminal Division in the AG's Office, died of an apparent heart attack on Nov. 24 in Jefferson City

Morris, 52, joined the AG's Office in 1977 and headed the Criminal Division from 1984 until October 2003.

"Jack was a tireless advocate," Attorney General Jay Nixon told the St. Louis Post-Dispatch. "He never forgot that crimes have victims and that those victims deserve representation."

Nixon has appointed Andrea Spillars as acting chief counsel of the division, which works to uphold criminal convictions and death sentences. Law enforcement officials can direct questions about criminal law appellate issues to Spillars at 573-751-4129.

Morris, a Rolla native, graduated from Washington University Law School in 1976. Before joining the AG's Office, he worked for the state Court of Appeals in St. Louis.

Illinois mandates tape-recorded confessions

Responding to the perception Illinois' criminal justice system is flawed, its governor signed into law a bill requiring officers to use an audiotape or videotape when questioning a murder suspect.

Illinois becomes the third state to require taping of statements. Alaska and Minnesota also require taping.

While there are no serious efforts to enact similar legislation in Missouri, officers should be aware of developments in other states. There is, of course, no constitutional mandate that confessions be recorded.

There are also practical issues that weigh against a uniform, mandatory rule requiring taping, including questions about retention and storage and cost.

Officers in Missouri still may decide whether to record an interview or interrogation. A bill was filed in the Missouri Legislature in 2003 to require the recording of statements by **all** criminal defendants and is expected to be filed again in 2004.

CONCEALED: CONTINUED FROM PAGE 1

record, however, he must revoke the certificate within 24 hours.

When the sheriff issues a certificate, he must report it to MULES. An applicant's status as a certificate holder and information regarding any holder is a closed record.

If a sheriff refuses to issue a certificate or act on an application, the applicant may appeal the decision within 30 days after receiving written notice of the denial. The appeal will be heard in small claims court.

Failure to carry the endorsement at all times is not a criminal offense but an officer may issue a citation of up to $35.

Places where concealed firearms are prohibited include:

- Police, sheriff and highway patrol offices without the consent of officer in charge.
- Within 25 feet of polling places on election days.
- Adult or juvenile detention or corrections institutions.
- Courthouses.
- Meetings of the governing body of local government or meetings of the general assembly (does not apply to members of the public body).
- Establishments licensed to dispense intoxicating liquor or nonintoxicating beer for consumption on the premises.
- Places where a firearm is prohibited by federal law.
- Higher education institutions or elementary and secondary schools without the consent of their governing bodies.
- Riverboat casinos.
- Gated areas of amusement parks.
- Churches or other places of worship without the consent of the minister.
- Sports arenas seating at least 5,000.
- Hospitals accessible to the public.
- Private property with a sign posted identifying the premises as off-limits to concealed firearms.

A person who carries a concealed firearm into a prohibited place and refuses to leave may be issued a citation and fined up to $100. For a second violation within six months, the person can be fined up to $200 and his concealed carry endorsement suspended for one year. A third violation within a year can result in a fine of up to $500 and the endorsement revoked for three years.

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UPDATE: CASE LAW

Opinions can be found at www.findlaw.com/casecode/index.html

MISSOURI SUPREME COURT

DRIVING WHILE REVOKED

Tommy R. Dorsey v. State
No. 85018
Mo. banc, Sept. 30, 2003

The court correctly applied Section 302.321.2 in enhancing appellant's driving while revoked conviction to a class D felony because the state produced evidence of four prior felony convictions. The statute clearly states that enhancement for purposes of driving while revoked is proper if the state proves four previous convictions "for any other offense." There is no requirement that these prior convictions be related to driving.

HEARSAY

State v. David B. Garrett
No. 25108, Mo. banc, Sept. 29, 2003

The court reversed the defendant's conviction of possession of a controlled substance when hearsay statements made by the confidential informant connecting the appellant to the drug activity was admitted at trial. The prejudicial statements did not qualify under a judicially carved exception for the "supplying [of] relevant background and continuity" to an officer's recital of events. The prosecutor elicited testimony from the officer that an informant told him the appellant was dealing drugs at 1624 Virginia. It would have been more than sufficient, if the state wished to provide the jury a context in which to view the officer's subsequent actions, for the officer to have testified that "he approached [appellant] or went to [1624 Virginia] by stating he did so 'upon information received.'"

DEATH PENALTY PUNISHMENT

State v. Deandra Mekel Buchanan
No. 84515, Mo. banc, Sept. 30, 2003

The jury found the defendant guilty of three counts of first-degree murder and one count of first-degree assault but was unable to agree on punishment for the murders, making no findings on the issues specified by Section 565.030.4, RSMo 2000. The trial court subsequently sentenced him to death for each murder and to life imprisonment for the assault. The Supreme Court reversed. A jury must determine each fact on which the general assembly conditioned an increase in the maximum punishment to death. Once the jury was unable to agree on punishment, the judge was not authorized to impose the death penalty. *State v. Whitfield*, 107 S.W.3d 253 (Mo. banc 2003).

EASTERN DISTRICT

EXPERT WITNESSES, BLOOD SPLATTER EVIDENCE

State v. Robert Partridge
No. 81281
Mo.App., E.D., Oct. 14, 2003

The officer who had 685 hours of police training, some of which involved the study of blood splatter, was qualified as an expert on blood splatter. The defendant was not in custody when he made statements to police because he initiated contact with the police, his freedom of movement was not restrained when he was talking to the police, and there was no evidence of any force, deception or police domination.

IDENTIFICATION EVIDENCE

State v. Donny Chilton
No. 82127
Mo.App., E.D., Oct. 14, 2003

The identifications of the defendant were reliable and not the result of impermissibly suggestive police procedures and, therefore, were admitted properly at trial. Witnesses were asked if the defendant was pictured in surveillance camera photos. An identification is not impermissibly suggestive simply because police tell a witness that the photo array contains the suspect's picture. The officer's question did not prompt the witnesses to make an identification, nor did it single out any suspect.

JOINDER AND SEVERANCE

State v. Jamel R. Dizer
No. 82376
Mo.App., E.D., Oct. 7, 2003

Joinder of counts stemming from two sodomy incidents to different victims was proper, and the trial court did not abuse its discretion by refusing to sever the counts. The tactics used by the defendant were similar. The offenses were virtually identical, involving forced and other illegal sex acts and restraint.

The victims were teen-age males from the neighborhood whom the defendant befriended. Both crimes were committed at the defendant's home after he socialized with the victim and others. Each time, the defendant told the victims he wanted to have sex with them and, when they refused, he choked them and used threats to subdue or prevent them from leaving.

He had each victim lie on their stomachs while he sodomized them. Then the defendant tried to ensure the victims would not tell anyone. The six-year lapse in time between offenses did not automatically defeat joinder, especially when the other circumstances of the crimes strongly suggested the same person committed them.

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UPDATE: CASE LAW

POST-CONVICTION MOTIONS

Shauna Solis v. State
No. 82163
Mo.App., E.D., Oct. 14, 2003

The movant's claim she was denied due process because the court failed to conduct a Rule 29.07(b)(4) examination regarding probable cause on ineffective assistance of counsel was not cognizable in a post conviction motion. If that exam affects any process rights, it is at the post-conviction stage.

A finding of probable cause on this exam entitles the defendant to new counsel to perfect an appeal or file a post-conviction motion. Thus, the failure to conduct an exam may, in some cases, prejudice the defendant's ability to seek relief in a post-conviction motion. That is not the case, because movant had new counsel and her post-conviction motion was timely filed. Even if it were, that would not make these claims cognizable in a Rule 24.035 motion.

WESTERN DISTRICT

DOUBLE JEOPARDY

State v. Carlos Luna Mendoza
No. 61637
Mo.App, W.D. Oct. 7, 2003

The appellant's conviction of second-degree felony murder and abuse of a child did not violate the double jeopardy clause. The court followed the Southern District opinion in *State v. Coody* , 867 S.W.2d 661 (Mo.App. S.D. 1993).

SOUTHERN DISTRICT

DISCOVERY

State v. S.D. Phillip Koenig
No. 24930
Mo.App., S.D., Sept. 29, 2003

The trial court did not abuse its discretion by "withholding from [defendant]" counseling records of the victim that the court "held **in camera**." A plain reading of Section 210.150.2(5) reveals the trial court is under no duty to disclose these records to a defendant. The statute clearly applies to the release of the records by the Division of Family Services. The records contained no relevant information — most discussed the victim's current mental state and her relationship with her foster family.

SEARCH AND SEIZURE, TRAFFIC STOPS

State v. Robert P. Manley
No. 25644
Mo.App., S.D., Sept. 26, 2003

The court affirmed the granting of the defendant's motion to suppress evidence. The defendant was seized within the meaning of the Fourth Amendment when the officer, identified as a police officer, accused the defendant of a traffic violation, retained the defendant's license and rental car agreement, asked the defendant to sit in the patrol car, and failed to indicate he was free to leave.

The officer did not have specific and articulable facts as grounds for reasonable suspicion at the time of the seizure. The officer believed the defendant was trying to avoid him, was driving a rental car with Texas plates and only stayed in Arizona for a short period. The officer thought the defendant was being elusive.

The articulated facts could describe a very large category of presumably innocent travelers who would be subject to virtually random seizures if the court were to conclude that as little foundation as there was in this case could justify a seizure.